

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 1062

INTRODUCER: Commerce Committee and Senator Fasano

SUBJECT: Employee leasing companies

DATE: March 4, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	Fav/CS
2.	_____	_____	TA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This committee substitute (CS) establishes the “Accurate Employment Statistics Enhancement Act,” which requires employee leasing companies, also known as Professional Employer Organizations (PEOs), to file reports with the Labor Market Statistics Center of the Agency for Workforce Innovation (AWI). Compared to current law, this CS requires that employee leasing companies report additional and more specific information more frequently (quarterly instead of biannually) to AWI. The quarterly reports must contain specific information about each employee leasing company and client “establishment,” including various types of identification, the number of employees, wages paid, and contract information.

This CS also prescribes a format for such reports and the time within which the reports must be filed. This CS grants AWI authority to adopt rules to implement these provisions and to administer, collect, enforce, and waive penalties for failure to file such reports. The CS also references s. 443.1715(1), F.S., to keep certain information or reports confidential and exempt.

This CS amends sections 443.036 and 443.1216 of the Florida Statutes.

II. Present Situation:

Employee Leasing Companies

Employee Leasing Companies, otherwise known as Professional Employer Organizations (PEOs), are organizations that enable clients to outsource the management of human resources, employee benefits, payroll, and workers' compensation.¹ There are approximately 700 employee leasing companies in the nation; 127 of those are in Florida.² The PEO industry is one of the largest employers in Florida, co-employing close to 700,000 employees and serving over 50,000 companies.³

Most of the clients that benefit from PEOs are small to medium size firms that need assistance with employment administration, reducing risk and liability, and offering a more comprehensive employee benefit package.⁴

According to the Florida Department of Business and Professional Regulation's Board of Employee Leasing Companies, an employee leasing company is different from the following types of organizations that provide administrative relief to companies:⁵

- Temporary help arrangements to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages, and seasonal workloads (e.g. Kelly Services temporary agency or day laborers);
- An arrangement in which an organization employs only one category of employees and assigns them to a client to perform a function inherent to that category and which function is separate and divisible from the primary business of the client (e.g. an accountant or subcontractors or consultants);
- A facilities staffing arrangement, whereby an organization assigns its employees to staff a specific client function, on an ongoing basis, provided that the employees comprise no more than 50 percent of the workforce at a client's worksite and provided that no more than 20 percent of the employees were the client's employees immediately preceding the commencement of the arrangement (e.g. concession staff for sports franchise or other employment organization);
- An arrangement in which an organization assigns its employees only to a commonly controlled company or group of companies as defined in s. 414 of the Internal Revenue Code and in which the organization does not hold itself out to the public as an employee leasing company (e.g. payroll company for restaurant chains or franchises); or
- A home health agency or a health care services pool unless otherwise engaged in business as an employee leasing company (e.g. Florida Home Health Care).

¹ <http://www.napeo.org/peoindustry/definition.cfm>.

² Statistics provided by the Department of Business and Professional Regulation, citing in part the National Association of Professional Employment Organizations, on November 25, 2008. Document on file with the committee.

³ Ibid. Page 3.

⁴ <http://www.napeo.org/peoindustry/definition.cfm> (describing some of benefits of PEOs) and <http://www.napeo.org/peoindustry/role.cfm> (referring to small to medium sized business' interest in PEOs).

⁵ See <http://www.myflorida.com/dbpr/pro/emplo/codes.html> and s. 468.520(4), F.S.; examples adapted from information provided by the Department of Business and Professional Regulation, November 25, 2008. Document on file with the committee.

An employee leasing company has a contractual relationship with its client, making the employee leasing company a co-employer of the client's employees. In fact, nothing changes at the business, except that, in relation to personnel matters, the employee reports to the employee leasing company.⁶

Current Employee Leasing Company Reporting

AWI's Labor Market Statistics Center produces data, such as employment, unemployment, and wage information, which assists employers and job seekers and may affect workforce and economic development.⁷ These statistics assist with economic analysis, business recruitment, career counseling and other critical business decision-making.⁸ AWI's Labor Market Statistics Center collects this data under several federal/state cooperative statistical programs, including the Quarterly Census of Employee Wages program. This program receives its data from quarterly tax reports submitted to the state by employers subject to state Unemployment Insurance laws under ch. 443, F.S.⁹

An employee leasing company is subject to ch. 443, F.S., and must therefore maintain and report records as required by s. 443.171(5), F.S., which requires reports to contain information required by AWI or the tax collection service provider. In addition to those reporting requirements, s. 443.036, F.S., requires each employee leasing company to maintain a list of clients and employees, including their social security numbers, who have been assigned to work at each client company job site. Furthermore, each client company job site must be identified by industry, products or services, and an address. The client list must be provided to the tax collection service provider biannually by June 30 and December 31 of each year.

Section 443.1216, F.S., provides that when an employer contracts with an employee leasing company, that employer's workers are considered employees of the employee leasing company. Employees of the employee leasing company are reported quarterly under the employee leasing company's tax identification number and contribution rate.

Problems with Current Reporting Requirements

Under the existing state unemployment compensation law, employee leasing companies report the number of their internal staff and the staff of their clients (leased staff) under a single tax identification number. According to AWI, this current reporting practice distorts industry and geographic economic data for the state and local areas, effectively skewing employer and employee numbers, employment by industry, and employment in geographic location. For example, in a Manufacturing Workforce Pipeline Study conducted by the Employ Florida Banner Center for Manufacturing, the Banner Center discovered that current reporting by the employee leasing companies cause jobs that were once classified in the manufacturing industry, or any other industry, to now be counted in the employment services industry, which results in

⁶ <http://definitions.uslegal.com/e/employee-leasing-programs/>.

⁷ http://www.floridajobs.org/publications/news_rel/LMS%20Release%2008-15-08.html.

⁸ *Id.*

⁹ See <http://www.labormarketinfo.com/Stats.htm> for a list and description of programs.

false declines in one industry and artificial job growth in another industry.¹⁰ Considering that the PEO industry co-employs approximately 700,000 employees in Florida, the data received by AWI may be significantly skewed.

AWI has been working with employee leasing companies, encouraging them to voluntarily report more detailed information about their companies and clients to alleviate the problem. However, according to AWI, the employee leasing companies' voluntary participation has been inadequate.

Reliance on unsound data derived from current faulty reporting practices may lead to poor employee, employer, and industry decisions.¹¹ Moreover, local, state, and federal governments may rely on the misinformation leading to misguided appropriations and legislation.

III. Effect of Proposed Changes:

Section 1 provides that the short title for the act is "Accurate Employment Statistics Enhancement Act."

Section 2 amends s. 443.036(18), F.S., to include in the definition of "employee leasing company" a requirement that employee leasing companies are responsible for providing quarterly reports on their clients and the companies' internal staff. The current report specifications are deleted. (New report specifications are included in section 3 of the CS.)

Section 3 amends s. 443.1216(1)(a), F.S., to require employee leasing companies to file quarterly reports with the Labor Market Statistics Center of AWI, or as otherwise directed by AWI.

Sub-subparagraph (1)(a)2.a., F.S., is created to require reports that are filed with AWI to contain information about the client and employee leasing company including, various identification information, a physical address, the number of employees, wages paid, and contract information. This is essentially the same data already required to be reported by all Florida employers.

Sub-subparagraph (1)(a)2.b., F.S., is created to require that the reports be submitted in a certain format, including electronically or as prescribed by AWI, and requires the reports to be filed by the last day of the month following the end of the calendar quarter. This sub-subparagraph also requires that the data reported under this CS match the data reported under the unemployment compensation quarterly tax and wage report.

Sub-subparagraph (1)(a)2.c., F.S., is created to provide AWI rulemaking authority, and grants AWI authority to administer, collect, enforce, and waive penalties for failure to file such reports.

¹⁰ "Manufacturing Workforce Pipeline Study," Employ Florida Banner Center for Manufacturing. September, 2007. Page 40. <http://www.banner-mfg.org/Photos/Pipeline%20Study.pdf>.

¹¹ See news article at http://www.sptimes.com/2008/02/05/news_pf/State/Region_s_hot_job_grow.shtml regarding potential effects of reliance on data produced from current employee leasing company reporting.

Sub-subparagraph (1)(a)2.d., F.S., is created to define “establishment” to mean “any location where business is conducted or where services or industrial operations are performed.”

Sub-subparagraph (1)(a)2.e., F.S., also provides that any information or report required under the CS to be submitted to the agency by an employer or agent of the employer is confidential and exempt as provided for in s. 443.1715(1), F.S.

Section 4 provides an effective date of October 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The CS makes reference to s. 443.1715(1), F.S., which makes confidential and exempt any information that would identify an employing unit as provided in current law. Therefore, information such as trade names, compensation account numbers, federal employer identification numbers, and internal identification codes would be confidential and exempt from public disclosure.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an indeterminate impact on employee leasing companies for producing and meeting the requirements of the reports as required by this CS.

C. Government Sector Impact:

There may be an indeterminate impact on AWI for processing more frequent and lengthier reports, promulgating rules, and enforcement costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The CS is different from the bill in that it clarifies that PEOs are “responsible to produce” rather than “produce” the quarterly reports to AWI required in this bill. Furthermore, the clarifies that the additional information provided by the employee leasing companies, as required by this bill, has the same confidentiality protection as the information required under current law. The CS also changes the title of the bill to make it correspond with the confidentiality provision provided for in the CS.

B. Amendments:

None.